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QUESTION OF THE VIOLATIONS OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Report of the High Commissioner for Human Rights on the situation of human rights in Kosovo, Federal Republic of Yugoslavia

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Introduction

1 In its resolution 1999/2 of 13 April 1999 the Commission on Human Rights requested the High Commissioner to report to it urgently on the situation of human rights and the humanitarian crisis relating to Kosovo and on the implementation of the provisions of the resolution. Pursuant to that request, the High Commissioner submitted reports on 31 May 1999 (E/CN 4/2000/7) and 27 September 1999 (E/CN 4/2000/10) in addition to her oral updates during the fifty-fifth session of the Commission itself. The present report addresses recent human rights developments as well as the activities of the Office of the High Commissioner for Human Rights in the Federal Republic of Yugoslavia (OHCHR-FRY), including Kosovo. The Commission will also have before it the report of the Special Rapporteur on the situation of human rights in Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia, Mr. J. Dienstbier (E/CN 4/2000/39).

2 Pursuant to Security Council resolution 1244 (1999) of 10 June 1999, the Secretary-General established the United Nations Interim Administration in Kosovo (UNMIK) with the assistance of relevant international organizations. UNMIK is composed of four "pillars", with the pillar devoted to institution-building (including the areas of human rights, democratization and civil society) placed under the responsibility of the Organization for Security and Cooperation in Europe (OSCE). It was further decided to create a post of Senior Human Rights Adviser in the Office of the Special Representative of the Secretary-General (SRSG) in Pristina. The Senior Human Rights Adviser was appointed in September 1999 on recommendation of the High Commissioner for Human Rights. His role has been to ensure a proactive approach on human rights in all UNMIK activities and the compatibility of UNMIK regulations with international human rights standards.

3 The deployment of the large international presence in Kosovo was soon followed by the resumption of activities of OHCHR-FRY in the region. OHCHR has sought to bring to the international presence in Kosovo the advantage of its mandate to monitor, report on and promote human rights throughout the Federal Republic of Yugoslavia (FRY). Partly in recognition of this mandate, the SRSG in September 1999 appointed OHCHR-FRY to organize and chair the Commission on Prisoners and Detainees. Since then OHCHR staff, including personnel seconded by the Governments of Switzerland and Norway, have placed a priority on the question of detention, interviewing families of over 200 persons taken into custody in Kosovo and consolidating this information with other cases in OHCHR files for follow-up in Belgrade, Pristina and elsewhere.

4 The High Commissioner wishes to pay tribute to the work carried out under the most difficult circumstances by UNMIK, OSCE, the Office of the United Nations High Commissioner for Refugees (UNHCR) and other intergovernmental and non-governmental organizations involved in the promotion and protection of human rights, establishment of the rule of law, and advancement of the principles of tolerance and peaceful coexistence in Kosovo. The vision of a multi-ethnic society in which the rights of all persons are respected equally, as set out in Security Council resolution 1244 (1999), remains to be achieved. Progress toward this goal has proven extremely difficult. The High Commissioner considers it imperative that the international community continue with its best efforts, including by providing UNMIK with the necessary resources to accomplish its task.

5. It is important, in addition, to recognize the role of the Stability Pact for South Eastern Europe, established in June 1999. The Stability Pact represents the collective effort of the European Union, the Group of eight countries (G-8), the countries of the region and key international organizations to address the challenges of the region in a coordinated and strategic manner. It is to be hoped that the necessary financial resources will be provided so that the Stability Pact can achieve its ambitious goals, including in connection with the urgent needs of Kosovo.

6. The present report considers four areas that the High Commissioner considers to be crucial to the restoration of order and the long-term protection of human rights in Kosovo: security concerns, including the rights of persons belonging to minorities; the rights of prisoners and detainees; establishment of the rule of law; and promoting a human rights culture. The report concludes with a series of recommendations for further action.

I. SECURITY CONCERNS AND THE RIGHTS OF PERSONS BELONGING TO MINORITIES

7. The exodus from Kosovo of persons belonging to minorities has continued since the High Commissioner's last report. While the vast majority of refugees and internally displaced persons (IDPs) who fled the region during the North Atlantic Treaty Organization (NATO) campaign of 1999 have returned, many others - mainly members of minority communities - have since fled from Kosovo. The Yugoslav Red Cross gives a figure of some 235,000 Serb and Roma IDPs now in Serbia and Montenegro. UNHCR is conducting a registration exercise together with local authorities to verify this figure.[1] Estimates for the number of Serbs remaining in Kosovo range up to some 100,000, in an overall population of roughly 2 million. Estimates for other communities include around 30,000 Roma (although many more may be present but unreported), up to 35,000 Muslim Slavs, over 20,000 Turks, 12,000 Gorani and some 500 Croats.[2] Final and definitive figures will not be available until a civil registration exercise has been completed.

8. During the final months of 1999 grave violations of human rights, mostly but not only of persons belonging to minorities, persisted in Kosovo. Dozens of killings were reported. Violations continue in 2000. Reports on violence in Kosovo have recently cited a decrease in the number of crimes directed against non-Albanians, but it is important to note that the number of potential targets is greatly reduced. Crimes committed against Serbs in Podujevo, for example, have ceased, since virtually all Serbs have left the town. Crimes committed against Muslim Slavs (Bosniaks) have risen, including with the January murder of four members of the same family in Prizren. The number of such crimes is now likely to decrease: after the Prizren murders, human rights workers and UNHCR reported the arrival of hundreds of Muslim Slav IDPs from Kosovo in Novi Pazar, Sandzak. Violations of human rights in Kosovo are targeted acts that spread fear among all Kosovo's populations. Recent events in Mitrovica, in which both Serbs and Albanians died, have highlighted the continuing fragility of inter-ethnic coexistence.

9. Minorities across the province continue to face serious restrictions on freedom of movement. In an effort to address this problem, UNHCR has organized a few bus lines between

localized Serb enclaves. These short-line transports cannot be considered public transportation, but are a first attempt by the international community to address the isolation of enclave residents. The cooperation of all sectors and local leaders will be essential to ensure that all Kosovo's residents can enjoy freedom of movement in a climate of respect and tolerance.

10. Access to employment is especially difficult for minority group members. As a result, many families are heavily dependent on humanitarian assistance for survival. Further efforts need to be undertaken to develop employment opportunities for persons belonging to minorities, and to ensure that unfair dismissals based on ethnic grounds are prevented. Access to basic services, including health and education, on an equitable basis also needs to be improved. The prevailing security situation and the related matter of freedom of movement have a major impact on this question. Devising appropriate strategies to meet the needs of minorities in this area remains a major challenge for UNMIK. The question of restitution of property will be of great importance to the minority population, including those displaced within Kosovo and elsewhere, who might wish to return to their homes.

11. The international community has been making relentless efforts to bring peace and stability to a multi-ethnic and multi-cultural Kosovo, including through the establishment by international organizations of the Task Force on Minorities. But whatever the international efforts, they cannot succeed without more direct, active and responsible engagement by all local ethnic groups in establishing law and order, tolerance, and a pluralistic society.

12. Ongoing efforts to ensure the active participation of minorities within the joint interim administrative structure deserve support. UNMIK has appointed local community officers to address the needs and concerns of minorities within the broad framework of civil administration. UNMIK, including the OSCE, is also encouraging the development of civil society. This process should facilitate inter-ethnic contacts at the community level. Progress is to be noted in the recruitment of minority community members to the Kosovo Police Service. A police force that is representative of all sectors of the population will be a key factor in confidence-building.

II. RIGHTS OF PRISONERS AND DETAINEES

13. The number of persons deprived of liberty in the Kosovo conflict remains unknown. No party to the conflict, despite repeated requests by OHCHR and others, has released the names of individuals it has detained. Available data are therefore based on information gathered in the field. The International Committee of the Red Cross (ICRC) released a report on 24 February 2000 which contains figures concerning missing and detained people. As of 1 February, ICRC records showed 1,571 persons visited in detention in Serbia and Montenegro and 54 people in the custody of the international security force in Kosovo (KFOR). Between 12 June 1999 and 1 February 2000, the ICRC had facilitated the release of 415 persons from the above-mentioned detention centres outside Kosovo. According to the ICRC, based on tracing requests received throughout the Kosovo crisis, the fate and whereabouts of another 2,987 persons remain unknown. Of these, 1,875 were reportedly arrested by the Yugoslav Army or security forces or abducted by Serb civilians, and 346 were reportedly abducted by the Kosovo Liberation Army (KLA) or Kosovo Albanian civilians. Information on

the whereabouts or detaining party of an additional 766 persons is lacking.[3] These figures correspond to those presented by most non-governmental organizations, as well as the Government of the FRY.

14. In the context of international efforts in Kosovo, the High Commissioner considers the protection of the rights of prisoners and detainees to be one of her Office's priorities. The speedy and even-handed solution of this problem could reduce tensions among ethnic groups and bring durable benefits for the peace-building process. Since 1996, OHCHR has monitored criminal proceedings and regularly presented its findings. Many of the persons convicted and sentenced during those earlier prosecutions are still imprisoned. After events in Drenica in November 1997 and February-March 1998, new proceedings were brought and continued following mass arrests in 1998 and early 1999. During that period, OHCHR monitored virtually every trial of alleged terrorists in Kosovo. Working with defence attorneys, prosecutors, district courts and the Serbian Ministry of Justice, inquiries by OHCHR from 1998 to March 1999 facilitated or led to the release of several hundred persons detained in connection with the crisis in Kosovo. By the start of the NATO campaign, however, approximately 1,800 cases were still pending, some in absentia.

15. On 21 September 1999, UNMIK established the Commission on Prisoners and Detainees in the framework of the Kosovo Transitional Council, under the chairmanship of the OHCHR Chief of Mission. The Commission gathers information on the circumstances of detention to support interventions and advocacy on behalf of detainees, prisoners and their families. Commission members are drawn from all parts of Kosovo and represent a broad spectrum of social and ethnic origins, including persons with a background in human rights law, representatives of non-governmental organizations, legal practitioners, and family members of prisoners and detainees.

16. In mid-December 1999, in the framework of the Commission on Prisoners and Detainees, OHCHR brought representatives of Kosovo Serbs and Kosovo Albanians together for the first time with representatives of KFOR and UNMIK to discuss the fate and whereabouts of persons deprived of liberty as a result of the Kosovo conflict.

17. OHCHR regularly visits places of detention in Serbia and Montenegro and monitors trials in various court districts. The OHCHR teams include persons with expertise in international standards of detention as well as domestic law and procedure. Hundreds of interventions have been made based on the humanitarian or legal situations of individual detainees in prisons under Ministry of Justice jurisdiction. According to Kosovo Albanians recently released, detainees have often suffered mistreatment while in Serbian custody, especially in Kosovo during the NATO campaign, while poor health conditions and overcrowding are common in almost all detention centres. Families visiting detained relatives have reportedly been harassed by officials at checkpoints and detention centres. OHCHR has also been able to confirm that large sums of money have been paid in many cases for the release of prisoners and detainees. The solicitors of the payment frequently indicate that they will collect the money when the detainee is released. Some released prisoners have told OHCHR that ill-treatment and, in one case, torture ceased

after OHCHR's first visit and never resumed. However, there have been reports of continued ill-treatment at Sremska Mitrovica prison, even after visits by OHCHR and ICRC.

18. In December 1999, OHCHR visited all Serb, Roma and Kosovo Albanian detainees held in the prison at Mitrovica administered by KFOR/UNMIK. The detainees indicated that, in general, conditions had improved, but delays in judicial proceedings in several cases are still a matter of concern. OHCHR has discussed this with UNMIK and, where relevant, local courts. In this connection, UNMIK adopted, on 22 December 1999, regulation No. 1999/26 providing for extension of detention beyond the six months previously permitted.

19. OHCHR and ICRC have not so far obtained access to places of detention of persons kidnapped or abducted on the territory of Kosovo. In efforts to obtain information on the fate and whereabouts of persons who have been abducted, OHCHR has obtained assistance from non-State actors, international agencies, family members, neighbours and other individuals. In some cases, persons acting in good will to assist the families of missing persons have expressed fears for their own security. Despite intensive inquiries, OHCHR has not so far been able to determine the fate and whereabouts of kidnapped and missing persons.

III. ESTABLISHMENT OF THE RULE OF LAW

20. Establishment of the rule of law in Kosovo remains a great challenge for UNMIK and KFOR. As of 1 March 2000, UNMIK had filled 2,361 posts, or some 65 per cent of the total authorized strength of 3,618 international civilian police posts (not including the 1,100 authorized police officers in special police units).[4] The SRSG in Kosovo, Dr. Bernard Kouchner, has reiterated calls for contributing States to expedite, as a matter of urgency, the full deployment of international police and to allocate the necessary resources to investigate serious crime.

21. UNMIK has meanwhile proceeded to fill several hundred judge and prosecutor positions with Kosovars in the newly formed Kosovo judiciary. A second round of recruitment for 100 more judges and prosecutors was expected to begin in March, bringing the total of appointed judges to around 400. Efforts to redress the ethnic imbalance in the composition of the judiciary have been hampered by security concerns and reported intimidation. The OSCE reports that some judges and prosecutors have suffered harassment, threats and even attacks.[5] UNHCR and OSCE also report a low rate of prosecutions of ethnic Albanians for acts of violence committed against minorities.[6]

22. In response to the dramatic escalation of violence in the town of Mitrovica in February, the SRSG adopted emergency measures to re-establish security and fill the judicial vacuum in the ethnically divided town. Regulation No. 2000/6 of 15 February provided for implementation of these measures and the immediate appointments of an international judge and prosecutor, to work alongside Kosovar judges.

23. There has been concern over the refusal of judicial officials to apply Yugoslav law as decreed by UNMIK regulation No. 1999/1. The SRSG has attempted to redress the problem by

way of regulation 1999/24 of 12 December 1999, ruling that the applicable law shall be the law in force in Kosovo on 22 March 1989 and that all persons undertaking public duties or holding public office in Kosovo shall observe internationally recognized human rights standards.

24. There is cause for encouragement in the progress which has been made, through the efforts of UNMIK, the OSCE, the Council of Europe and others, towards the establishment of an ombudsman institution for Kosovo. A draft regulation on this question is currently being considered.

25. The High Commissioner welcomes the recommendations made in December 1999 by the SRSG on the establishment of a Kosovo Court which would be able to prosecute persons suspected of committing war crimes or serious crimes committed on the basis of a person's ethnicity, religion or political beliefs. Judges and prosecutors for the court are expected to come from Kosovo and abroad.

IV. PROMOTING A HUMAN RIGHTS CULTURE

26. The Kosovo Human Rights Conference, held in Pristina on 10 and 11 December 1999, gathered representatives of intergovernmental and non-governmental organizations, human rights experts and activists from abroad and the region. The Deputy High Commissioner represented the Office of the High Commissioner for Human Rights. The event, which coincided with Human Rights Day, was marked by the participation of persons belonging to different ethnic groups who had the opportunity to express their views in a free and democratic context. The High Commissioner welcomed the adoption of a final declaration calling for the promotion of peaceful coexistence, tolerance, establishment of the rule of law and a strengthened judiciary in a human rights-oriented society. At the same time, the Pristina-based NGO Council for the Defense of Human Rights and Freedoms held an international human rights conference to celebrate its many years of work.

27. More recently, an inter-religious meeting took place in Bosnia-Herzegovina, at which Kosovo religious leaders made a declaration concerning shared moral commitment. The Mufti and President of the Islamic Community, the Serbian Orthodox Bishop of Raska and Prizren and the Bishop of the Roman Catholic Church of Prizren jointly condemned all violence against innocent persons and any form of abuse or violation of fundamental human rights.

V. RECOMMENDATIONS

A. Security concerns and the rights of minorities

28. The High Commissioner stresses the responsibility of all parties to create a secure environment in Kosovo that will allow minority groups, refugees and internally displaced persons to return, and to allow all those who wish to remain in Kosovo a genuine possibility to do so, irrespective of their ethnic origin.

29. The present cycle of violence and discrimination against minorities has to be brought to an end, if the rebuilding and renewal process in Kosovo is to be effective. Local leaders and communities must be persuaded to use their influence to stop violence and impunity.

30. The leaders of Kosovo communities must make greater efforts to translate their calls for tolerance and coexistence into concrete action. As observed by the OSCE, UNHCR and others, such actions should include strong condemnation of all attacks on minorities, mobilization of community support against such actions, identification of those responsible, encouragement of witnesses to come forward, suggestion of ways to prevent recurring attacks and ensuring freedom of movement for everyone in Kosovo.

31. Minority groups and the majority should be assured that their interests will be taken into account, and their claims adjudicated or mediated in a fair and impartial manner, in all aspects of social, economic and cultural life in the region.

B. Prisoners and detainees

32. The High Commissioner calls for the unconditional release of all political prisoners and detainees not charged with war crimes or common criminal activities. This step would greatly contribute to ending violence and facilitating the process towards peaceful coexistence.

33. The matter of persons deprived of liberty as a result of the Kosovo crisis should be maintained on the agenda of all authorities - international, national and local. It should be pursued from a humanitarian and human rights perspective, addressing the need for resolution of all prisoner, detainee and missing person issues, regardless of ethnicity or political affiliation of victim or detaining party. Such efforts should enjoy the expressed support of multilateral, regional, and non-governmental organizations as well as Governments.

34. All international organizations involved in activities related to persons deprived of liberty as a result of the Kosovo conflict should work to strengthen their cooperation, including exchange of information where consistent with their mandates.

35. The Governments of the FRY, Serbia and Montenegro, the Serbian Orthodox Church, non-governmental organizations, the Kosovo Albanian and Kosovo Serbian leadership and local community leaders should be urged to cooperate with the Commission on Prisoners and Detainees and to respond to inquiries from OHCHR and other relevant organizations.

36. All State and non-State authorities holding detainees should release all relevant information they possess: names, places of detention and conditions under which detainees were deprived of liberty.

37. All State and non-State authorities holding detainees should immediately permit access by OHCHR, ICRC, attorneys, family members and physicians to persons at their places of detention.

38. International and regional human rights mechanisms, including relevant mechanisms of the Commission on Human Rights, should be employed wherever possible to address the situation of persons arbitrarily detained, subjected to torture and ill-treatment, or otherwise subjected to violations of international human rights and humanitarian standards.

C. Establishment of the rule of law

39. The High Commissioner urges contributing States to provide, as a matter of the highest priority, for the full deployment of United Nations civilian police and the strengthening of the multi-ethnic local police force throughout Kosovo as a key step in guaranteeing respect for law and order and creating a safe environment for all inhabitants of Kosovo.

40. Support should be given to the call by the OSCE for contributing States to provide UNMIK with increased financial, technical and human resources to fund, train and support an independent and multi-ethnic judiciary to ensure that the Kosovo justice system can function effectively. Support should also be given to the creation of an ombudsman institution.

41. The High Commissioner appeals to the leaders of the Kosovo communities to use their influence to ensure the independence and the impartiality of the newly established judiciary.

42. The High Commissioner calls on contributing States to provide OHCHR with enhanced resources to carry out functions including the monitoring of judicial processes in Kosovo and treatment of prisoners and detainees throughout the FRY.

D. Promoting a human rights culture

43. Initiatives for the development of peaceful coexistence and tolerance should have the highest priority in Kosovo. Human rights should be promoted throughout public administration, at all levels of education, and among professional and religious communities. An important role should be played by civil society, including women's organizations, youth groups and associations of the elderly. These groups, who were - and still are - victims of human rights violations, can make a substantial contribution to the promotion of a human rights culture.

44. The issue of impunity must be addressed fairly and impartially. All individuals, regardless of ethnicity or official rank or capacity, directly involved in the practice of so-called "ethnic cleansing" or other serious violations of human rights and humanitarian law should appear before a competent court and be judged. The lack of accountability for such crimes will only encourage perpetrators, fuel resentment and perpetuate the cycle of violence.

Notes

[1] Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo (S/2000/177, 3 March 2000).

[2] UNHCR/OSCE, "Assessment of the Situation of Ethnic Minorities in Kosovo", 11 February 2000, p. 3.

[3] International Committee of the Red Cross, "Missing persons from the Kosovo crisis: ICRC response", Geneva, Switzerland, 24 February 2000.

[4] S/2000/177, Supra note 1.

[5] OSCE Report 2, The Development of the Kosovo Judicial System, 17 December 1999: "In November, the President of the Court in Mitrovica had his car stoned ... [and] the Chief Prosecutor in Pec was threatened that if th.ee detainees were not released, he would be executed ..."

[6] UNHCR/OSCE, Supra note 2.